1946

File No. S. Dwr - 5/46

Legal DEPARTMENT

"A" BRANCH

Subject:— Suit - Dharwar

Institution of — for recovery of a sum of Rs. 457-12-3 with future interest and Costs from Mahamadsha Said Hussein, an ex-bailiff of the Civil Court at Haveri.

L.C. Suit No 253 of 1946

File No. S - Dwr. 5/46

Std. Sectt. Slip 24-B

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		Province of B'bay	
		Vs.	
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		Claim — Rs. 457-12-3.	
		For recovery of a sum of Rs. 457-12-3 with future interest and costs.	
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L.D. 9

This is a proposal from the District Judge of Dharwar to file a civil suit against an ex-bailiff of the Haveri Court for recovery of certain sums misappropriated by him. The bailiff recovered the amounts from the Judgment debtors in execution of two Darkhasts but did not credit the money in the Court. He was prosecuted for an offence under section 409 of the Indian Penal Code and convicted. As the decree-holders are now claiming the amounts recovered by him, it is proposed to file this suit and recover the money by the attachment and sale of his property and by the attachment of his Provident Fund when it is paid to him. His surety is also to be impleaded in the suit as the second defendant.

Sanction may be accorded to the institution of the suit on the lines of the accompanying Memorandum of Instructions.

12/7/46

A.A.L.R. 12/7

R.L.A. 17/7/46

Secy H.D. 19.7.46

x207-P
18-7-46

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IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION)
AT DHARWAR.

The Province of Bombay .....Plaintiff.

versus.

1. Mohomadsha vallad Sayyad Hussensha Barudwale, Caste Mohamedan, age Occupation Ex- bailiff of Haveri Civil Judge's Court, at present Prisoner No.28863 Hindalga Central Prison (Belgaum)
2. Imamsab vallad Maktumsab Balgannr, Caste Mohamedan, aged , Occupation of Gadag.

Defendants.

Claim Rs.457-12-3.

In this case, the plff submits as follows:-

1. Defendant No.1 was in the yeaf 1945 a Government servant serving as a bailiff in the court of the Civil Judge Haveri, District Dharwar. While he was thus posted ~~in his~~ he was entrusted by the Court with the execution of two Jangam Warrants, one for the recovery of a sum of Rs.416-10-6 and the other for recovery of a sum of Rs.37-10-0 respectively in L.D.. No.95 of 1945 and S.D.No.173/1945 of the Civil Court of Haveri. In addition the deft No.1 had with him a sum of Rs.3-8-0. on account of subsistence allowance which he had to pay to a witness in a suit in which he had to serve a witness summons.

2. The deft No.1 recovered the sum of Rs.454-4-4 (Rs.416-10-6 and Rs.37-10-0) in connection with the two Jangam warrants issued in the above mentioned Darkhasts on or about 7-10-1945 and 10-10-1045, but failed to credit any of these amounts in Court and subsequently absconded with the money. The deft N did not also serve the

witness sammons and kept with himself the amount of Rs.3-8-0.

3. In the consequence the deft. No.1 was prosecuted for an offence under sec.409 of the Indian Penal Code before the First Class Magistrate, Haveri who convicted him and sentenced him to suffer rigrous imprisonment for six months and pay a fine of Rs.400/-in default to suffer further regourous imprisonment for one month and a half. The Magistrate did not pass any orders regarding the amount to the paid in case the fine was recovered.

4. The deft No.1 bailiff has since been dismissed from Government service. As the decree holdera are claiming the amounts recovered by him on behalf of the Civil Court, it has become necessary to file a suit against him.

5. The deft No.2 is a surety for deft No.1 for the latter's good conduct as a Government servant to the extent of Rs.150/- only. This deft No.2 is also therefore liable to plff to pay to the extent of Rs.150/-on 12th June 1946. A notice was issued by the District Court to this deft. 2 stating the fact of misappropriation of Government money made by deft. No.1 and asking him deft No.2) to reimburse Government and pay it Rs.150/- But deft No.2 also failed to comply with the notice. Hence deft No.2 also is added as a party to the suit.

6. The cause of action arose on or about 7th and 10th October 1945 when the deft No.1 received the decretal amounts from the judgement debtors and about the same date with respect to the amount of the subsistence allowance which he failed to pay to the witness and misappropriated for himself.

7. The suit having been filed by the Provincial Government of Bombay and the ordinary residence of defendants 1 and 2 being at Dharwar and Gadag respectively, this Court of the Civil Judge (Senior Division) Dharwar has jurisdiction to entertain this suit.

8. Court fees are paid on the sum of Rs.157/12/3 which plaintiff claims with future interest and costs. The value of the suit for the purposes of court-fees and jurisdiction is the said amount of Rs.457/12/3.

9. The aplaintiff submits that defendant No1 is liable to pay the whole sum of Rs.457/12/3 with future interest and that defendant 2 as a surity for defendant No.1 is liable to pay Rs.150/-with

future interest.

10. The plaintiff prays for a decree for recovery of a sum of Rs.157/12/3 from the ex bailiff defendant No.1 and for a sum of Rs.150/- from the defendant No.2, with future interest and costs.

Dated:

I the District Government Pleader, Dharwar, state on oath that the contents mentioned in the above paras of plain are true according to the information received and believed to be correct.

Dated.

7 2 31

Suits :

Dharwar.

Institution of — for recovery of a sum of Rs. 457-12-3 with future interest and costs from Mahamadsha Said Hussein, an ex-bailiff of the Civil Court at Haveri.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 5211.

Bombay Castle, 24th July 1946.

Letter from the District Judge, Dharwar, No. 2132. dated the 28th June 1946—Forwarding papers and requesting that sanction may be accorded to the institution of a suit against Mahamadsha Said Hussein, Ex-bailiff of the Civil Court at Haveri and his surety Imamsab Maktumsab of Gadag for the recovery of a sum of Rs. 457-12-3 misappropriated by the ex-bailiff.

Memorandum to the District Government Pleader, Dharwar, No. 5191, dated the 23rd July 1946—Forwarding a Memorandum of Instructions and directing him to take steps to institute the suit.

RESOLUTION.—Sanction is accorded to the institution of a suit in the Court of the Civil Judge, Senior Division, Dharwar, against Mahamadsha Said Hussein, Ex-bailiff of the Civil Court at Haveri and his surety Imamsab Maktumsab of Gadag for recovering

a sum of Rs. 457–12–3 with future interest and costs, on the lines of the accompanying Memorandum of Instructions.

By order of the Governor of Bombay,

Original P.N.Moos

P. N. MOOS,
Secretary to Government.

G. R., No. 5211, L. D., dated the 24th July 1946.

To

*The Home Department,
*The Collector of Dharwar,
*The District Judge, Dharwar,
The District Government Pleader, Dharwar (with two copies of Memorandum of Instructions).

*With a copy of the Memorandum of Instructions.

No. of 1946.

Copy forwarded for information and guidance to

Submitted after issue.
2 - Exhibits Sur /46 (Mos
Issued 21/11 Bom 22/11 Amr 24/11

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MEMORANDUM OF INSTRUCTIONS.

It is proposed to file a civil suit on behalf of Government against one Mahamadsha Said Hussein, an ex-bailiff of the Civil Court at Haveri (District) Dharwar and his surety Imamsab Maktumsab of Gadag, for recovering a sum of Rs. 457–12–3 with future interest and costs.

2. While he was posted at the Civil Court at Haveri, the bailiff Mahamadsha was entrusted with the execution of two Jangam Warrants, one for the recovery of Rs. 416–10–6 and the other for the recovery of Rs. 37–10–0 respectively in L. C. Darkhast No. 95 of 1945 and S. C. Darkhast No. 173 of 1945 of the Civil Court of Haveri. In addition, the bailiff had with him Rs. 3–8–0 on account of subsistence allowance which he had to pay to a witness in a suit in which he had to serve a witness summons.

3. The bailiff recovered Rs. 454–4–4 in connection with the two Jangam warrants and gave due receipts to the Judgment-debtors concerned. He did not serve the witness summons and kept with himself the amount of Rs. 3–8–0. He failed to credit any of these amounts in Court and subsequently absconded with the money. In consequence he was prosecuted for an offence under section 409 of the Indian Penal Code before the First Class Magistrate, Haveri, who convicted him and sentenced him to suffer rigorous imprisonment for six months and to pay a fine of Rs. 400, in default, to suffer further imprisonment for one month and a half. The Magistrate did not pass any orders regarding the amount to be paid in Court in case the fine was recovered.

4. The bailiff has since been dismissed from service. As the decree-holders are claiming the amounts recovered by him from the Civil Court, it is necessary to file a suit against him and his surety Imamsab for recovery of these amounts. A notice was issued to the surety to pay Rs. 150 (because he is a surety for that amount only) within 8 days but he has not complied with it. The bailiff Mahamadsha has to his credit a sum of Rs. 380 in the Government Provident Fund. Another sum of Rs. 30 is lying in the Haveri Court to be paid to him on account of dearness allowance. It is further reported that he has a house at Dharwar of the value of about Rs. 500.

5. The suit should be filed in the Court of the Civil Judge, Senior Division, Dharwar. The Province of Bombay should be named as the plaintiff. The defendants will be (1) the ex-bailiff Mahamadsha Said Hussein and (2) Imamsab Maktumsab of Gadag who was the surety of

defendant No. 1. The District Government Pleader should ascertain their full names, addresses etc. The relief to be claimed in the plaint will be for a decree for Rs. 457-12-3 with running interest thereon at 6 per cent. from the date of the suit till satisfaction and costs of the suit. The surety will be liable to the extent of Rs. 150 only.

6. As regards the recovery of the decretal amount, the bailiff's deposits in the Provident Fund would be exempt from attachment under clause (*k*) of the proviso to sub-section (*1*) of section 60 of the Civil Procedure Code. Section 3 (*1*) of the Provident Funds Act (XIX of 1925) provides that a compulsory deposit in any Government or Railway Provident Fund shall not ..... be liable to attachment under any decree or order of any Civil, Revenue or Criminal Court in respect of any debt or liability incurred by the subscriber or depositor. It should, however, be noted that after the amount standing to the credit of a subscriber is paid to him and comes into his hands, it ceases to retain its character as a compulsory deposit and it becomes his property which can be attached in execution of decrees against him (*see* Mulla: Civil Procedure Code, 11th Edition, pp. 246-247 and Walchand *v.* Charles A. Williams, I.L.R. 59 Bom. 517). Therefore it will be possible to recover the decretal amount by the attachment of Rs. 380 standing to his credit in the Government Provident Fund as soon as it is paid to him, and also by the attachment of Rs. 30 standing to his credit in the Haveri Civil Court and his immoveable property at Dharwar. If it is necessary, the District Government Pleader should apply to the Court for an attachment before Judgment.

7. The District Government Pleader should lead oral and documentary evidence to show that Mahamadsha misappropriated the amounts in his possession and that he is liable to repay the same.

Vera Desai 5/40
S Desai 5/40
23/5/40

Received on 27.9-46 Decided on 6-12-46

Registered on 27-9-'46 . Duration 2 months and 9 days.

37 | 11

In the Court of the Civil Judg, Senior Division,

At Dharwar.

L.C.Suit No. 253 of 1946 Ex. 21.

The Province of Bombay. . . . . .Plaintiff.

against.

1. Mahamadsha Wd. Sayyadhnsseinsha Barudwale of Haveri at present prisoner No.28863, Hindalga Central Prison (Belgaum)
2. Imamsab Wd. Maktumsab Balganur of Gadag. } Defendants

Claim Rs.457-12-3.

The plff sues to recober Rs.457-12-3 from deft. No.1 and to get costs and future interest on the amount of principal. The plff has also filed the suit to recover Rs.150/-out ofthe claim from deft. No.2.

The plff states that deft 1 was a Government servant in the year 1945 and he was seving as a bailiff in the court of the Civil Judge, Junior Division, Haveri, District Dharwar and that he was entrusted by that court with the executionof two Jangam warrants one for the recovery of a sum of Rs. 416-10-0 and the other for the recovery of a sum of Rs 37-10-0. It is stated that the first amount was due in L.D.No.95/45 of the Haveri Court and the second amount in S.D.No.173/45 of that court and that deft. No1. was given a sum of Rs.3-8-0 as subsistence allowance which he was to pay to a witness in a suit in which he had to serve a witness summons. It is further stated by the plff that deft No.1 recovered Rs Rs.454-4-4 in connection with the Jan gam warrants issued by the Haveri court on or about 7-10-45 and about 10-10-45 but he failed to credit the amount in court and he subsequently absconded with the amount. It is further stated that deft 1 did not serve witness sommons and that he kept the amount of Rs.3-8-0 with himself and therefore he was prosecuted for an offence under section 409 of of the Indian Penal Code before the First Class Magistrate, Haveri who convicted him and sentenced him to suffer rigorous imprisonment for six months and to pay a fine of Rs.400/- in default to suffer further regorous imprisonment for a monhh and a half and the Magistrate did not pass any orders regarding the amount to be paid in case the fine was recovered. It is stated by the plff that deft.1. was subsequently dismissed from Government service and as

the decree-holders are claiming the amount recovered by him on behalf of the Civil Court the present suit is filed against him. The plff says that deft.No.2 was a surety for deft as a Government servant for his good conduct to the extent of Rs.150/- and therefore deft No.2 is liable to the plff to pay to the extent of Rs.150/- and therefore a notice was issued by the District Court Dharwar to deft. No.2 informing him of the misappropriation of Government money by deft No.1 and calling upon deft. No.2 to pay to Government the amount of Rs.150/- and deft, No2 failedto pay the same and therefore he is addd as a party to the suit.

3. Deft. No.1 is in the Hidalga Central Prison Belgaum, and he has not appeared in person and he has not engaged any pleader. He has sent a written statement (Ex.12) through the Jailor. It is seen therefrom that he admots that the amount was recovered by himin the darkhast and that it was not credited by him in court at Haveri.

4. Deft. No.2 states at Ex.13 that deft 1 owns property and that the amount should be recovered from him in the first instance and that thereafter he would pay the amount due from him as a surety.

5. Issues for decision are raised at Ex.19 as follows:-

1. Does plff prove the claim ? 2. What order ?

6. Answers.

1. Yes. 2. As given below.

Reasons.

7. It is in evidence that the bailiff deft 1 was serving in the Dharwar District and he was posted at Haveri. He was entrusted with the Jangam warrants onein L.D.No.95/45 for Rs.416-12-6 and the other in S. D.No..173/45 for Rs.37-10-0 and that both these warrants were issued by the court at Haveri and that deft. No.1 was given Rs.3-8-0 on accountof subsistence allowance to be given to a witness in a suit and that the summons was to be served by deft 1 on the witness. It is also seen that deft No.1 recovered the amount of Rs.454-4-4 regarding the two warrants and he did not serve the witbess with the summons and therefore deft.1 had in all Rs.457-12-3. Deft.No.1 gave the two receipts (Exs.15 and 16) to the judgment debtors for the amount obtained by him from them. They are duly proved in the case by the witness (Ex.20).Ex.18 is a Diary kep by deft No.1 as a bailiff. That shows on page 2 that deft 1 was entrust with the two warrants and the witness summons. As deft. No.1 did not credit the amount in court he was prosecuted for misappropriation and he was convicted by the First Class Magistrate Haveri and deft No.1 is in the Hindalga Central Prison Belgaum undergoing rigorous imprisonment

8. Deft No.2 was a surety to deft No.1 to the extent of Rs.150/-

for good conduct. An effort was made to recover the amount but no money was obtained and therefore the Government of Bombay have filed the present suit. I therefore find issue No.1 in the affirmative.

Order.

The plff do recover Rs.457-12-3 and costs of the suit from defendant No.1 who shall pay future interest at 6 per cent per year on Rs.457-12-3 or unpaid part therof from the date of the suit till realisation. Out of the amount defendant No.2 is liable to pay Rs.150/- and proportionate costs of the suit with future interest at 6 per cent per year from the date of the suit till realisation.

6th December 1946.

Sd/ B.A.Chaugule.

Civil Judge, Senior Division,.

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28-1-47.

Sic omittenda sunt haec.

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S.A.S. How was this received. Is there no forwarding to Aer Lingus
S.S.P? There should be one

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D E C R E E.

In the Court of the Civil Judge, Senior Division, Dharwar

At Dhrwar.

L.C.Suit No. 253 of 1946. Ex.22.

Plff:- The Province of Bombay.

Vs.

Deft:- 1. Mohamadsha wd. Sayyad Hussensha Barudwale Ex.-bailiff of the Haveri Court at Present prisoner No.28863 Hindalga Central Prisen (Belgaum).
2. Imamsab wd. Maktumsab Balaganur of Gadag.

Claim Rs.457-12-3.

In this case, the plff submits as follows:-

1. Deft 1 was in the year 1945 a Government servant as a Bailif in the court of the Civil Judge Haveri, District Dharwar. While he was thus posted he was entrusted by the Court with the execution of two Jangam Warrants, one for the r covery of a sum of Rs.416-10-6 and the other for recovery of a sum of Rs.37-10-0 respectively in L.D.No. 95 of 1945 and S.D.No. 172 of 1945 of the Civil Court of Haveri. In addition the deft 1 had with him a sum of Rs.3-8-0 on account of subsistance allowance which he had to pay to a witness in a suit in which he had to serve a witness summons. The deft. 1 recovered the sum of Rs.454-4-4 (Rs.416-10-6 and Rs.37-10-0) in connection with the two jangam warrants issued in the above mentioned Darkhasts on or about 7-10-1945 and 10-10-1945, but failed to creddt any of these amounts in court and subsequently acsconded with the money. The deft 1 did not also serve the witness summons and kept with himself the amonnt of Rs3-8-0.

2. In consequence the deft 1 was prosecuted for an offence under section 409 of the Indian Penl Code before the First Class Magistrate, Haveri who convicted him and sentenced him to suffer rigorous imprisonment for six months and to pay a fine of Rs.400/- in default to suffer further rigorous imprisonment for one month and a half. The Magistrate did not pass any orders regarding the amountto be paid in case the fine was recovered.

3. The defendant 1 bailiff has since been dismissed from Government service. As the decree holders are claiming the amounts recovered by him on behalf of the Civil Court, it has become necessary to file a suit against him.

4. The defendant No.2 is a surety for deft 1, for the latter's good conduct as a Government servant to the extent of Rs. only. This deft No.2 is also therefore liable to plff to extent of Rs.150/- on 12 th June 1946. A notice was issued

District Court to this deft No.2 stating the fact of misappropriation of Gover money made by deft No.1 and asking him (deft.No2) to reimburse Government and pay it ₹.150/-. But defendant No.2 failed to comply with the notice. Hence deft No.2 also is added as a party to the suit.

5. The cause of action arosem on or about 7th and 10th October 1945 when the deft No.1 received the decretal amounts from the judgment debtors and about the same date with respect to the amount of the subsistence allowance which he failed to pay to the witness and misappropriatedm for himself.

6. The suit having been filed by the Provincial Government of Bombay and the onrdinary residence of defendants 1 and 2 being at Dharwar and Gadag respectivley, this court of the Civil Judge (Senior Division) Dharwar has jurisdiction to entertain this suit.

7. Court fees are paid on the sum of ₹.457-12-3 which plff claims m with future interest and costs. The value of the suit for the purposes of Court fees and jurisdiction is the said amount of ₹.457-12-3.

8. The plff submits that deft 1 is liable to pay the whole sum of ₹.457-12-3 with future interest and that deft No.2 is a surety for deft 1 is liable to pay ₹.150/- with future interest.

9. The plff prays for a decree for recov ry of a sum of ₹.457-12-3 from the Ex-bailiff deft 1 and for a sum of ₹.150/- fron the deft No.2 with future interest and costs.

This suit coming this day for final disposal before Mr.B.A.Chaugule Civil Judge,Senior Division,Dharwar, in the presence of Mr.S.R.Malpur for plff and defendants being absent it is ordered and decreed as under:-

The plff do recover ₹.457-12-3 and costs of the suit from deft 1 who shall pay future interest at 6 per cent per year on ₹.457-12-3 or unpaid part thereof from the date of the suit till realisation. Out of the amount defendant No2 is liable to pay ₹.150/- and proportionate costs(i.e.₹.31-1-0) of the suit with future interest at 6 per cent per annum year from the date of the suit till realisation.

Bill of Costs.

for Plff.	₹.	₹. a. p.	For Deft.
1.Stamp for the plaint.		43- 2- 0	Nil
2.Pleader's fees on ₹.457-12-3.		22- 14- 0	"
3.Process fees.		2- 0- 0	
	Total ₹.	68- 0- 0	Nil

Given under my hand and the seal of the court this 6th day of December 46.

Sd/ M.G.Kamoji
karkun

(seal)

Sd/ B.A.Chaugule
Civil Judge Senior Division
15-12-1946.

Sd/SR.Malapur, Asst.Govt.Pl.for plff.

Suits:

Dharwar.

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Institution of - for recovery of a sum of Rs.457-12-3 with future interest and costs from Mahamadsha Said Hussein, an ex-bailiff of the Civil Court at Haveri.

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 307
Bombay Castle, 28th March 1947.

Read Government Resolution, Legal Department, No. 5211, dated the 24th July 1946.

Letter from the District Government Pleader, Dharwar, No. 31, dated the January 1947 - Forwarding uncertified copies of the judgment and decree in the suit noted in the margin which was decided by the Civil Judge, Senior Division, Dharwar, on 6th December 1946, when the following order was passed :-

In the Court of the Civil Judge Senior Division, Dharwar. L. G. Suit No. 253 of 1946.	
The Province of Bombay - Plaintiff Vs.	
1. Mahamadsha Wd. Sayyadhusseinsha Barudwale	Defendants
2. Imamsab Wd. Maktumsab Bal-ganur	
Claim Rs. 457-12-3	

"The plaintiff do recover Rs. 457-12-3 and costs of the suit from defendant No. 1 who shall pay future interest at 6 per cent per year on Rs. 457-12-3 or unpaid part thereof from the date of the suit till realisation. Out of the amount defendant No. 2 is liable to pay Rs. 150/- and proportionate costs of the suit with future interest at 6 per cent per year from the date of the suit till realisation."

RESOLUTION: The result of the suit is recorded.

Subd for signature
KRB
29/3
S.A.S.

By order of the Governor of Bombay,

Original

R. M. Mehta,
Assistant Secretary to Government.

To

The Home Department,

The Collector of Dharwar,

The District Judge, Dharwar.

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25.3.

Issued
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Sold after issue

File in S. Dec. 3/46

KBB
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S. Dec 5/46
31-3-47